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BY E-MAIL AND FEDERAL EXPRESS

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Re: Westbank Asbestos Site, Jefferson Parish, Louisiana

Dear Counsel:

The purpose of this letter is to respond, on behalf of Johns Manville (JM), to your letter of May 25, 2010, concerning settlement of the Government's claims against JM at the Westbank Asbestos Site in Jefferson Parish, Louisiana (Site). This letter constitutes a confidential settlement communication pursuant to Rule 408 of the Federal Rules of Evidence, and therefore nothing in it shall be admissible for any purpose. This letter is not intended to constitute an Initial Notification under the terms of the Global Settlement Order (GSO) entered in Manville Corp. v. United States, No. 91 Civ. 66832 (RWS)(S.D.N.Y., October 28, 1994).

While we appreciate the Government's willingness to accept JM's most recent monetary proposal, JM's March 22, 2010 counter-offer clearly indicated that its monetary offer was based on the terms listed. The Government has proposed materially different non-monetary terms in its May 25, 2010 letter in attempting to resolve potential liability for future response actions at the Site. Specifically, the Government has attempted to shift the burden of proof from it to JM in a manner contrary to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC § 9601 et seq., and the Global Settlement Order. JM will not agree to a shifting of the burden of proof for future claims in this manner.

Under the terms of the Government's May 25, 2010 offer, JM would be required to pay 26.125% of the costs incurred by EPA in the future for cleanup of asbestos containing material on other non-JM owned properties, "but only to the extent that those additional response actions are for parcels not previously remediated or sampled by EPA". The Government proposes to limit the

term "sampled" to mean material removed and sampled in a laboratory. The Government further proposes that "should JM prove that the asbestos containing material that EPA cleans up in the future does not include waste material generated from JM's Marrero facility, JM would not be required to pay". In the event that the Government cleans up asbestos used as fill on other parcels in the Westbank area, "the burden falls on JM to show that it did not generate the asbestos." The Government proposes to implement this approach by submitting "unreconciled Superfund Cost Recovery Package Imaging and On-Line System ('SCORPIOS') report or the equivalent" to JM which identify the costs that will serve as the base to which the 26.125% would be applied. The Government further proposes that JM would need to pay or file a dispute within forty five days of its receipt of the "bill" for the costs. The dispute could only be based on a) the parcels at issue were previously remediated or sampled; b) accounting errors; or c) JM can prove that it did not generate the asbestos on the parcels at issue. The Government proposes that disputes be resolved by an unspecified "EPA decisions maker".

There are several problems with the government's proposal. First, as JM has repeatedly pointed out, the Government has never identified the specific parcels which were previously remediated or sampled by EPA. As a result, it is impossible for JM to evaluate the risk of this offer without knowing how many properties were assessed but not "sampled," or how many properties were determined to contain asbestos-containing materials by visual inspection only. At this juncture, it would be impossible for JM to file a dispute on the basis of the first criteria in the Government's proposal. JM requests a list of properties that were previously remediated, previously sampled, and previously assessed by other means.

Secondly, JM requests that the Government "reconcile" any cost packages that would serve as a basis for claims. It has been JM's experience that "unreconciled" cost packages sometimes include costs that have nothing to do with the site at issue (e.g. costs incurred by a contractor that has performed work at multiple locations in addition to the site at issue). Providing more "final" cost data would decrease the likelihood of disputes for "accounting errors."

Third, as noted above, requiring JM to prove that it "did not generate the asbestos on the parcels at issue" is problematic from at least two perspectives. As noted above, the Government's proposal has the effect of shifting the CERCLA statutory burden from the Government to JM, which is unacceptable to JM. Moreover, the Government's proposal apparently does not contemplate prior notice to JM of work that is to be done, only payment by JM after the work has been done. In most instances, any future work that the Government would do (removal and disposal) will have the effect of destroying the evidence and make it impossible for JM to dispute whether the asbestos in question was waste shipped from the former JM Marrero plant.

As JM previously set out in its offer, the Government must first produce admissible evidence that the material had left as a waste material from the JM Marrero plant (i.e., that it was not a product

that was later disposed by another or was not waste disposed and transported from another source). There must be a notice procedure in advance of the work to provide JM notice and opportunity to inspect, to provide a proper time to evaluate the evidence. Unless the government can show the need for an emergency removal, and at this point we believe it would be difficult to show there is an emergency, the issue of whether the material was a waste taken from the former JM Marrero property to the property in question must be resolved prior to the work being performed on any property.

JM proposes that if the Government plans to do work for which it believes JM has liability under this settlement and for which the Government plans to seek reimbursement from JM, the Government would provide the admissible evidence described above concerning the material in question to JM. JM would have sixty (60) days from receipt to investigate and dispute the evidence proffered. Work could begin at the end of the 60-day period (with the exception for emergency removal discussed above), although no request for reimbursement could be made until any dispute of liability is decided, if a dispute is made. A final decision of liability, or the 61st day after notification and presentation of evidence in the absence of a dispute, triggers the JM obligation to pay the 26.125% share of the costs. Then, once presented with a reconciled invoice, JM would have 45 days to pay or object on one or more of the following bases: (1) the property was previously remediated or investigated/sampled; (2) accounting errors; or (3) that any costs are inconsistent with the National Contingency Plan.

As is the case with past costs, payment for future costs will be subject to the limitations of the Global Settlement Order, including the annual cap.

We reiterate our appreciation for the Government's acceptance of the monetary terms of JM's March 22, 2010 counter-offer, but as we noted in that offer, JM is not willing to pay that amount unless the non-monetary terms in that offer are acceptable to the Government. JM continues to believe that it would be to the advantage of all parties to resolve this matter without litigation, and that the non-monetary terms can be resolved. In the event that you wish to discuss, or have questions or comments, please contact the undersigned.

Very truly yours,

Ed Kenney (sd)

Edward P. Kenney

cc: Brent Tracy